





THE LAW OF SLAVERY

IN THE

UNITED STATES.

BY

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THE following pages are reprinted from the London edition of "Hippolytus and his Age," by C. C. J. Bunsen, published in 1854. The opinion of so competent and disinterested a judge upon the Law of Slavery in the United States will, it is believed, have weight at this time with intelligent men of all parties.

Boston, July, 1863.



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I HAVE now to consider and pass judgment with the same frankness upon the second dark point in the social system of Protestant humanity: Slavery, as it exists in the Southern States of the Union. The opprobrium which this subject has brought upon Protestant Christendom is greater even than that produced by the laxity of the Prussian law of divorce. A book, the marvellous success of which has pronounced the verdict of the human race, and which has received documentary proof by the Key to it, has made this point more prominent in the consciousness of the Christian mind than it ever was before. Now, divesting that topic of all that is based upon erroneous views of the system, or connected with the passions of party-feeling, the conscientious historian, placed upon the elevated point of

observation presented to us by the subject of this volume, must say: The legal existence of slavery in itself is not incompatible with Christianity. It is, besides, an evil engrafted, against their remonstrances, upon those States, when they were English colonies. But the historian must add, that the principle which makes its extinction legally or practically impossible is decidedly anti-Christian: or, in other words, it is incompatible with Christianity, that State legislation should arrogate to itself the inherent right of the slaveholding citizen to manumit his slave, and to prepare him for liberty by allowing him useful education and free labor. There does not exist in the history of any civilized nation, even among the Gentiles, such an encroachment upon the liberty of the citizen, and such an aggressive act of human legislation against the word of Christ and the will of God, as revealed to us in the Gospel and in conscience. The Roman law was harsh throughout, frequently cruel; and this natural hard-heartedness shows itself in the laws respecting their slaves. But the owner of the slave could as well manumit him as he manumitted his son, and could allow him to acquire money for his emancipation as well as education: the end of which was, almost invariably, manumission. Nor does it require any proof, according to the very texts of the laws and the letter of the decisions of the highest judicial authorities



in those States, cited by the illustrious authoress of Uncle Tom's Cabin in her Key (Part II. ch. xiii.), to establish the fact that in the four States of South Carolina, Georgia, Alabama, and Mississippi (and in fact, also, in North Carolina), emancipation cannot be effected, except by a special act of the legislature, sanctioning a solemn and well-grounded act of the owner, — an act coupled with the most studied difficulties, and open to most cruel opposition from interested parties.

The law of the State of Mississippi is laid down by Judge Stroud in the following terms :

“The emancipation must be an *instrument in writing*, a last will or deed, &c., *under seal*, attested by at least *two credible witnesses* or *acknowledged in the court* of the county or corporation where the emancipator resides ; *proof satisfactory to the General Assembly* must be adduced that the slave has done *some meritorious act for the benefit of his master*, or rendered *some distinguished service to the State* ; all which circumstances are but *prerequisites*, and are of no efficacy until a special *Act of Assembly* sanctions the emancipation ; to which may be added, as has been already stated, a saving of the *rights of creditors*, and the protection of the *widow's thirds*.”

The same *prerequisite* of “*meritorious services*, to be adjudicated on and allowed by the county court,” is exacted by an act of the General Assembly of North Carolina ; and all slaves emancipated contrary to the provisions of this act are to be committed to the jail of the county, and at

the next court held for that county to be sold to the highest bidder.

The law of North Carolina adds this clause :

“ The sheriff is directed, five days before the time for the sale of the *emancipated* negro, to give notice, in writing, to the person by whom the emancipation was made, to the end that such person may, if he thinks proper, renew his claim to the negro so emancipated by him ; on failure to do which, the sale is to be made by the sheriff, and one fifth part of the net proceeds is to become the property of the freeholder by whom the apprehension was made, and the remaining four fifths are to be paid into the public treasury.”

Nor is this legislation an inoperative one. Mrs. Harriet Beecher Stowe gives from the public papers the following case :

“ A man of the name of Elisha Brazealle, a planter in Jefferson County, Mississippi, was attacked with a loathsome disease. During his illness he was faithfully nursed by a mulatto slave, to whose assiduous attentions he felt that he owed his life. He was duly impressed by her devotion, and soon after his recovery took her to Ohio, and had her educated. She was very intelligent, and improved her advantages so rapidly that when he visited her again he determined to marry her. He executed a deed for her emancipation, and had it recorded both in the States of Ohio and Mississippi, and made her his wife.

“ Mr. Brazealle returned with her to Mississippi, and in process of time had a son. After a few years he sickened and died, leaving a will, in which, after reciting the deed of emancipation, he declared his intention to ratify it, and devised all his property to this lad, acknowledging him in the will to be his son.

“ Some poor and distant relations in North Carolina,

whom he did not know, and for whom he did not care, hearing of his death, came on to Mississippi, and claimed the property thus devised. They instituted a suit for its recovery, and the case (it is reported in Howard's Mississippi Reports, vol. ii. p. 837) came before Judge Sharkey, our new consul at Havana. He decided it, and in that decision declared the act of emancipation *an offence against morality*, and pernicious and detestable as an example. He set *aside the will*; gave the property of *Brazealle* to his distant relations, condemned *Brazealle's son*, and his wife, that son's mother, again to bondage, and made them the slaves of these North Carolina kinsmen, as part of the assets of the estate."

Chief Justice Sharkey observes, that although, according to principles of national comity, "contracts are to be construed according to the laws of the country or State where they are made," yet these principles are not to be followed when they lead to conclusions in conflict with "the great and fundamental policy of the State." He then continues :

"Let us apply these principles to the deed of emancipation. To give it validity would be, in the first place, a violation of the declared policy, and contrary to a positive law of the State.

"The policy of the State is indicated by the general course of legislation on a given subject; and we find that free negroes are deemed offensive, because they are not permitted to emigrate or to remain in the State.

"The state of the case shows conclusively that the contract had its origin in an offence against morality, pernicious and detestable as an example. But, above all, it seems to have been planned and executed with a fixed design to evade the rigor of the laws of this State."

Now, passing over the gross Pharisaism of the moral remark, I am afraid all this is good law; but, for this very reason, it condemns the law. Nobody denies that a change of the law must be left to the State legislatures; but no free heart, unawed by Lynch Law, and not warped by national susceptibility, will allow that the system is compatible with a profession of Christianity. Such an inroad both upon the liberty of the individual citizen and the dictates of Christianity can be explained, but it can never be justified. It is unparalleled in the history of the world. It is put to shame by the Roman Catholic Colonies, and how could it consist with the Gospel? If we ask Christ and the Apostles and the ancient Christians, they tell us unanimously, that the rest must be left to the quiet but irresistible working of the spirit of Christianity in a Christian people. Faith in that spirit is required from the opponents of the present system as well as from its abettors. I will not conceal the fact that my own faith in the power of that spirit, among a nation conspicuous for so much Christian feeling and moral earnestness, remains unshaken. But I will also not refrain from saying, with the earnestness of a historian and with the sincerity of a Christian, that the eyes of all nations are upon the people of the United States, as to what they will do on this point at this moment. It rests with them to belie the doubts

of those who do not believe in their national morality, and to give to the world an example of the reality of their liberty, and of the sincerity of their Christian profession. The greater the Christian vocation of a nation is, the higher and the more difficult the problem will be which it must solve — or perish. All nations fall morally before they perish politically ; Republican nations before all others ; and there are already distressing signs which show the baneful influence of the system, even beyond the Slave States. The moral oppression of the colored people in the free-labor States is one of those distressing symptoms. Such a state of things warps the judgment of American writers even in philosophical and historical researches, and renders that great but absolute nation more susceptible as to any frank Christian discussion of this their dark point, than despotic princes usually are when their system of dynastic absolutism is attacked. In the mean time, it must never be forgotten, that even now slavery is the exception, free labor the rule ; and that the letter and spirit of the Constitution are in as glaring contradiction to that exceptional evil of State legislation, as the latter is to the Gospel and the whole history of Christianity.

Without prying into the secrets of Providence, one may reasonably believe that the great destiny of the Anglo-Saxon race in the other hemisphere cannot be fulfilled in all its extent and glory,

until the colored race, christianized and educated for municipal liberty, starts with the moral energy of the father, and the bodily aptitude of the mother, into those parts of the American continent where the Anglo-Saxon cannot work, and therefore not live worthy of himself, and where the two races which now hold it, the Indian and the Spanish, are withering away or dying in convulsions.

Whatever is in the plan of Eternal Providence, must be done, and will be done. The laws of the moral government of the world are as irresistible as the physical laws of the universe. The only option which nations have is to become the willing or the unwilling instruments of this eternal order ; to rise by fulfilling its decrees, or to be crushed by its wheels when, in the progress of ages, they pass over what is in their way ; to live in the annals of mankind as a blessing to future generations, or as a curse for all times to come.



